



*Interagency
Committee for*
**OUTDOOR
RECREATION**

GUIDELINES FOR USE OF CONSERVATION EASEMENTS

RIPARIAN HABITAT GRANT PROGRAM

Manual 6

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SECTION 1 – INTRODUCTION

Background	This manual provides the guidelines for counties, cities and towns, conservation districts, nature conservancy organizations, and land trusts wishing to use conservation easements to acquire less-than-fee interests with funds administered by the Interagency Committee for Outdoor Recreation (IAC) under its Riparian Habitat Grant Program. The manual should also be helpful to private landowners selling or donating conservation easements under this program.														
The Riparian Habitat Program	The purpose of the Riparian Habitat Grant Program (RHP) is to provide matching grants for projects that protect, restore, and enhance riparian habitat on privately owned land. The primary focus of the program is to evaluate the use of less-than-fee acquisition methods, such as purchase of conservation easements or development rights, to protect riparian habitat and to ensure the longevity of restoration and enhancement projects.														
Eligible Projects	<p>There are two categories of eligible projects:</p> <ul style="list-style-type: none">• Less-than-fee land acquisitions, and• Combination: Less-than-fee acquisitions <i>combined with</i> restoration or enhancement projects on the same land														
Abbreviations	<p>Abbreviations Used:</p> <table><tr><td>IAC</td><td>-</td><td>Interagency Committee for Outdoor Recreation</td></tr><tr><td>RCW</td><td>-</td><td>Revised Code of Washington</td></tr><tr><td>RHP</td><td>-</td><td>Riparian Habitat Grant Program</td></tr><tr><td>WDFW</td><td>-</td><td>Washington Department of Fish and Wildlife</td></tr></table>			IAC	-	Interagency Committee for Outdoor Recreation	RCW	-	Revised Code of Washington	RHP	-	Riparian Habitat Grant Program	WDFW	-	Washington Department of Fish and Wildlife
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Contacting IAC	<p>The Interagency Committee for Outdoor Recreation is the administrating agency for the material provided in this Manual.</p> <p>Our mailing address is: P.O. Box 40917 Olympia, Washington 98504-0917</p> <p>Phone, fax and Internet: VOICE: (360) 902-3000 FAX: (360) 902-3026 TDD: (360) 902-1996 E-mail: info@iac.wa.gov Web Site: http://www.wa.gov/iac/</p>														

SECTION 2 – DEFINITIONS

Riparian Habitat *Riparian habitat* is defined by Washington Department of Fish and Wildlife (WDFW) as the area adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems which mutually influence each other.¹ Riparian habitat provides vital functions to aquatic and upland ecosystems which include: soil and streambank stability, stream temperature control, water purification, water storage and conservation, and supply of food and nutrients to the aquatic system. Riparian areas include near-shore marine habitat, estuaries, lakes, wetlands, streams, and rivers.

Less-Than-Fee Acquisition *Less-than-fee acquisition* means the purchase of one or more rights associated with a given property for a term of not less than 30 years. For the purposes of the Riparian Habitat Program, less-than-fee acquisition will usually mean the purchase of a conservation easement from a willing seller. Other examples of rights that can be purchased are timber or development rights.

This manual provides guidelines for the drafting of conservation easements. Conservation easements typically can be drafted in a manner to include the acquisition of timber or development rights.

Conservation Easement, Grantee, Grantor *A conservation easement* is a recorded legal agreement a landowner makes to restrict certain activities and uses that may take place on his or her property. Restrictions may include, for example, constructing buildings, subdividing the land, and harvesting timber. Conservation easements convey the right to enforce these restrictions to the qualified organization or agency holding the easement. See RCW 64.04.130. The qualified conservation easement recipient is referred to as the *Grantee* under the conservation easement. The landowner is referred to as the *Grantor* under the conservation easement.

Conservation easements typically convey other rights to the grantee as well. These rights may include the following:

- Right to identify and protect the conservation values of the property
- Right to enter the land for inspection and enforcement
- Right to enter the land for observation and study

¹Washington Department of Fish and Wildlife. 1995. Priority Habitat Management Recommendations: Riparian. Draft, 196 pp.

- Right to restore or enhance the conservation values of the property (e.g., riparian habitat)
- Right to assign these rights in the property to another qualified conservation recipient

Benefits retained by the Grantor may include:

- Personal satisfaction of knowing their property will be protected forever
- Retain underlying property ownership and control public access
- Retain certain land use rights based on needs and desires of landowner
- Possible tax relief from donated conservation easements

Conservation easements may be granted in perpetuity or for a term of no less than 30 years.

**Riparian Habitat
Conservation
Zone**

The portion of the property containing riparian habitat and protected by the conservation easement is the "Riparian Habitat Conservation Zone".

**Assignment of
Rights,
Assignor,
Assignee**

An *assignment of rights* is a recorded legal agreement the organization who acquires a conservation easement with a RHP grant assigns in favor of the IAC. The Assignment of Rights is intended to secure the public's interest that conservation easements acquired with RHP matching grants protect riparian habitat land and ensure the longevity of restoration and enhancement projects. Its provisions ensure that the IAC has the legal ability to step in and act if the organization fails to manage or defend the conservation easement as required under RHP policies. The organization holding the conservation easement is referred to as the *Assignor* under the assignment of rights. The IAC is referred to as the *Assignee* under the Assignment of Rights.

Sponsors

Sponsors are agencies and organizations -- conservation districts, counties, cities, nonprofit land trusts and "nature conservancy" organizations -- who receive RHP grants. A sponsor typically acquires the conservation easement and performs whatever restoration or enhancement project that occurs on the land protected by the conservation easement. In some instances, though, a sponsor (such as a conservation district) may perform only the restoration or enhancement project and contract with another organization (such as a land trust) to acquire and hold the conservation easements.

SECTION 3 - CONSIDERATIONS IN ACQUIRING A CONSERVATION EASEMENT

The following is an outline of basic considerations for counties, cities and towns, conservation districts, nature conservancy organizations, and land trusts in acquiring a conservation easement under the RHP. These considerations include:

- Investigations ("Due Diligence") to complete before acquiring the conservation easement;
- Issues in drafting the conservation easement ("Drafting"); and
- Administration of the conservation easement ("Administration").

These considerations are by no means the only considerations in acquiring a conservation easement. *For a thorough understanding of the use of conservation easements in acquiring and protecting habitat, and examples of other elements you may need to include, you should consult the references provided in Appendix A.*

1. Due Diligence

- A. Obtain a preliminary title commitment to determine that the owner has clear title and that there are no mortgages or other encumbrances on the property that may prevent protection of its resources. Property rights obtained with IAC funding assistance **must** be free of all reservations or encumbrances which would be inconsistent with the purpose of the easement.
 1. If there is a mortgage, obtain a mortgage subordination from the lender.
 2. If there is an underlying mining interest, obtain a mining subordination from the owner of the mining interests.
- B. Strongly consider obtaining a survey of the area of the property, i.e. the riparian habitat conservation zone, restricted by the conservation easement.
 1. It is best to have a survey of the easement boundary to ensure that the boundaries are marked and the corners are pinned with permanent markers, and its metes and bounds should be written in the legal description of the easement.
- C. Compile a baseline documentation of the property (see Appendix B).

1. Baseline documentation provides an inventory of the conservation resource values of the property at the time the conservation easement was acquired. It also identifies restrictions written into the conservation easement and may be used as evidence of the condition of the property in the event of an easement term violation.
 - D. Strongly consider obtaining adequate casualty and liability insurance coverage for the property.
 1. Although in most situations, the landowner will indemnify the easement holder for liabilities relating to ownership and management of the property, indemnity clauses are not a substitute for insurance.
 - E. Strongly consider conducting an environmental assessment of the property to determine if toxic or hazardous substances have been used on the property, and obtain an environmental warranty and indemnity from the landowner. All sponsors receiving IAC funding assistance for projects must complete a Toxic and Hazardous Substances Certification as part of their Project Agreement.
 1. Acquiring an interest in contaminated property may subject your organization or agency to cleanup liability.
 2. Obtaining an environmental warranty and indemnity from the landowner will protect your organization with respect to potential cleanup liability.
- 2. Drafting**
- A. Draft the conservation easement instrument to stand the test of time.
 1. Its terms should be flexible enough to allow unforeseen activities that are consistent with the purposes of the easement, but strong and clear enough to prevent inconsistent activities.
 2. Its terms should be drafted with the next landowner, who may be hostile to the easement, in mind.
 3. It is extremely important that individuals drafting conservation easements have training on easement requirements and drafting experience (see References in Appendix A). Regardless of who might initially draft a particular conservation easement, legal counsel as well as others in your organization or agency should review each easement.
 - B. Clearly state the purpose of the conservation easement. Allow only such uses of the property that are consistent with the purpose of the conservation easement.

1. By clearly stating the purpose of the easement, you provide a workable standard for evaluating the consistency of future uses of the property with the purpose of the easement.

E.g., "The purpose of this easement is to preserve the views of the property as seen from Mount Constitution on Orcas Island, in a wooded manner where no human-made improvements will be visible at any time during the year." Under this standard, if a new house is later constructed that is visible, a judge can tell it is clearly in violation of the original intent of the easement.

- C. Clearly identify the exact location of conservation easement boundaries on the ground. Doing so will allow your organization or agency the ability to monitor encroachments.

1. As previously noted, it is best to have a survey of the easement boundary to ensure that the boundaries are marked and the corners are pinned with permanent markers, and its metes and bounds should be written in the legal description of the easement.

- D. Use measurable standards for determining what land uses or activities are and are not allowed in the conservation easement.

E.g., Suppose an easement is intended to protect riparian habitat along a stream. Don't simply say, "No activities are allowed that would disturb the riparian habitat." Instead, if possible, define a specific geographic area such as a setback from the stream and state specific uses and activities that are prohibited or permitted within the setback.

1. If measurable standards are impractical, refer to accepted standards.

E.g., Suppose an easement allows for agriculture and forestry management. Specify that "forestry and agricultural management activities shall be in accordance with the current scientifically-based practices recommended by the U.S. Cooperative Extension Service, U.S. National Resource Conservation Service, or other government or private nonprofit natural resource conservation and management agencies then active."

- E. Require notice and approval for any permitted uses and activities with a high potential for causing violations of the conservation easement.

E.g., for an easement that allows for the construction of roads or buildings in certain areas of the property, you may want to require that the landowner obtain permission from the holder of the conservation easement (Grantee) before constructing a road or building.

- F. Clearly state the remedies available to your organization or agency should a violation of the conservation easement occur.
 - 1. Remedies should include injunctive relief, restoration and damages.
 - 2. Remedies should allow for recovery by your organization or agency of reasonable enforcement expenses, including attorneys fees, should it prevail in the enforcement action.
- G. Require notification of subsequent transfers by the landowner.
 - 1. Adequate notice of a pending sale provides the opportunity for a representative of your organization to tour the property with the prospective purchaser and explain with particularity the restrictions the easement places on the property.

**3.
Administration**

- A. Maintain a good ongoing relationship with the landowner.
 - 1. Make sure the landowner thoroughly understands the provisions of the conservation easement and the responsibility of your organization in enforcing the terms of the easement.
 - 2. Communicate with the landowner regularly.
- B. Carry out a program of regular, systematic, and well-documented monitoring of the conservation easement, beginning with baseline documentation of the condition of the property at the time of acquisition of the conservation easement.
 - 1. Allows your organization to build rapport with the landowner.
 - 2. Allows your organization to catch violations early and, in some cases, before the landowner is committed to the activity that caused or may cause the violation.
 - 3. Allows your organization to build a record in case it goes to court.
- C. Be prepared to enforce the terms of the conservation easement.
 - 1. A conservation easement is only as good as its enforcement allows it to be.
 - 2. Enforcing the conservation easement terms helps maintain the legal authority of your organization or agency to enforce. For example, a court may interpret delayed or non-enforcement as a waiver of the holder's right to enforce.

3. Enforcing the conservation easement terms helps engender public confidence in your organization and programs such as the RHP.
- D. Ensure that you have the financial ability to enforce the terms of the conservation easement.
1. Strongly consider establishing, financing and managing a stewardship endowment that can cover monitoring and enforcement expenses. An endowment is a sum of money set aside by an organization for the purpose of producing long term income.

SECTION 4 - LANGUAGE TO INCLUDE IN THE CONSERVATION EASEMENT TO MEET RHP PROJECT REQUIREMENTS

This Section presents a checklist identifying those provisions your organization or agency, as the holder of the conservation easement, must include in the conservation easement to meet RHP project requirements, or should strongly consider including. In the checklist:

- **Required** provisions are indicated by a checked box ☒
- Provisions to **strongly consider** including are indicated by an unchecked box ☐
- Sample language is set forth in "Ariel typeface."
- *[Italicized/bracketed language]* signifies clauses that are optional or consist of a choice of language that may apply, depending on the circumstances.

"Grantor" is the owner of the property protected by the conservation easement.
"Grantee" is the agency or organization who holds the conservation easement and is referred to as "organization" below.

PLEASE NOTE THAT THIS CHECKLIST DOES NOT IDENTIFY ALL OF THE PROVISIONS YOUR ORGANIZATION SHOULD INCLUDE IN THE CONSERVATION EASEMENT. Each easement should be individually drafted to fit the unique facts and circumstances presented by a given transaction. Consult the references provided in Appendix A for sample conservation easement forms or more guidance concerning the drafting of conservation easements.

1. Recitals (Background Information)

- ☒ Separately identify the portion of the property that contains the riparian habitat that will be protected, or protected and restored or enhanced, by the conservation easement.

The portion of the Property containing riparian habitat and protected by this Easement is described in Exhibit __ (description) and shown in Exhibit __ (site map), which are attached and incorporated into this Easement by this reference ("Riparian Habitat Conservation Zone").

- ☒ Note that riparian habitat is one of the conservation values provided by the property.

The Riparian Habitat Conservation Zone provides riparian habitat and other natural values (collectively, the "Conservation Values"), as more particularly described in Recitals __ and __ below. For purposes of this Easement, riparian habitat is the land area adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems which mutually influence each other and provide habitat for fish and wildlife species (Riparian Habitat). Riparian Habitat provides vital functions to aquatic and upland ecosystems which include: soil and streambank stability, stream temperature control, water purification, water storage and conservation, and supply of food and nutrients to the aquatic system. Riparian Habitat include rivers, streams, wetlands, lakes, and estuaries or near-shore marine habitat.

- ☒ Refer to the baseline inventory (see Appendix B).

The specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated _____ *[on file at the offices of Grantee][attached hereto as Exhibit ____]* and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of conservation easement acquisition. and which is intended to serve an objective information baseline for monitoring compliance with the terms of this grant.

**2.
Conveyance and
Consideration**

- ☒ Track statutory language necessary to convey real property interests in Washington State.
- ☒ Identify term of conservation easement (e.g., 30 year-term or in perpetuity).

**3.
Purpose**

- ☒ Identify riparian habitat protection as one of the specific purposes of the conservation easement.

Purpose. The purpose of this Easement is to assure that the Riparian Habitat Conservation Zone will be retained predominantly in its natural condition *[as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law)]*, and to prevent any use of, or activity on, the Riparian Habitat Conservation Zone that will *[significantly]* impair or interfere with the Conservation Values of the Riparian Habitat Conservation Zone (the "Purpose"). This Purpose includes the protection of riparian habitat as defined in Recital I. __ of this Easement. Grantor intends that this Easement will confine the use of, or activity on, the Riparian Habitat Conservation Zone to such uses and activities that are consistent with this Purpose. *[Except as specifically provided for in Section __, t][T]*his Easement shall not be construed as affording to the general public physical access to the Property.

- ☒ Identify, as appropriate, any plans to monitor, protect, maintain, restore or enhance the Riparian Habitat Conservation Zone.

Stewardship Plan. To further this Purpose, Grantee may develop a plan for stewardship of the Riparian Habitat Conservation Zone (the "Stewardship Plan")*[which is attached as Exhibit __ and incorporated into this Easement by this reference]*. The Stewardship Plan *[is intended to describe][describes]* activities to monitor, protect, maintain, and *[restore] [enhance]* the original and natural conditions of the Riparian Habitat Conservation Zone.

**4.
Rights Conveyed
to Grantee**

List the rights that are being conveyed to the organization holding the conservation easement (Grantee).

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- ☒ Provide right of organization to preserve conservation values of the property.

[Identification] Protection *[Restoration] [Enhancement]*. To *[identify,]* preserve and protect *[in perpetuity]* and to *[restore] [enhance] [maintain] [and manage]* the Conservation Values of the Riparian Habitat Conservation Zone.

- ☒ Provide right of organization to enter the land for inspection and enforcement, and where applicable, environmental monitoring, maintenance, restoration, and enhancement.

Access.

1. To enter the Property *[annually]*, at a reasonable time and upon prior written notice to Grantor, for the purpose of making a general inspection of the Riparian Habitat Conservation Zone to monitor compliance with this Easement.
 - [2. To enter the Property*], or allow Grantee's invitees or licensees to enter the Property,* at reasonable times and upon prior written notice to Grantor, for the purpose of *[restoring] [enhancing] [maintaining] [managing]* the Conservation Values of the Riparian Habitat Conservation Zone through implementation of the Stewardship Plan.]
 - [3. To enter the Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property.]
- ☒ Provide right to injunction to prevent any activity on or use of the property that is inconsistent with the purpose of the conservation easement and to require restoration of the land to condition at time of the grant of easement.

Injunction and Restoration. To enjoin any use of, or activity on, the Riparian Habitat Conservation Zone that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require *[or undertake]* the restoration of such areas or features of the Riparian Habitat Conservation Zone as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section ____.

- ☒ Provide right of organization to enforce terms of the conservation easement.

To enforce the terms of this Easement, consistent with Section ____.

**5.
Permitted Uses
and Activities**

Tailor "permitted uses and activities" to the land, the parties, the reasons for protection, and needs of the landowner to enjoy the property. Permitted uses might include modification of existing structures, construction of roads or structures in specified areas, access by grantor for passive recreation, agricultural or timber harvesting activities in specified areas or under specified conditions. Consult the references in Appendix A for examples.

- ☒ Include ability to undertake stewardship activities on the property.

Stewardship Activities. The undertaking of any activity pursuant to any Stewardship Plan covering the Riparian Habitat Conservation Zone is consistent with the purpose of this Easement.

**6.
Prohibited Uses
and Activities**

- ☒ Tailor "prohibited uses and activities" to the land, the parties, the reasons for protection, and needs of the landowner to enjoy the property. Prohibited uses might include agricultural or timber harvesting activities in specified areas, land subdivision, construction of roads or structures, hunting, or mining. Consult the references in Appendix A for examples.

**7.
Notice and
Approval**

- ☒ Require advance notice to organization if landowner plans to undertake certain permitted actions that could be inconsistent with the purpose of the conservation easement.
- ☒ Provide right of organization to approve, deny or condition proposed actions of landowner.
- ☒ Provide addresses of landowner and organization for required notices under the easement.

**8.
Dispute
Resolution and
Grantee's
Remedies**

- ☒ Provide right of organization to give notice of violations to landowner, with demand for repair or restoration.

Notice of Violation, Corrective Action. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Riparian Habitat Conservation Zone resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Riparian Habitat Conservation Zone so injured to its prior condition in accordance with a plan approved by Grantee.

Grantor's Failure to Respond. Grantee may bring an action as provided in subsection ____ if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or
2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

Grantee's Action.

1. Injunctive Relief. Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:
 - a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and
 - b. To require the restoration of the Property to the condition that existed prior to any such injury.
2. Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of environmental values. Without limiting Grantor's liability in any way, Grantee [*in its sole discretion, may*][*shall first*] apply any damages recovered to the cost of undertaking corrective or restoration action on the Riparian Habitat Conservation Zone.

Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Riparian Habitat Conservation Zone, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- ☐ Consider providing that costs of enforcing the terms of the easement are to be borne by landowner unless landowner prevails in court.

In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. *[In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.] [If Grantor ultimately prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, each party shall bear its own costs.]*

- ☐ Consider providing that enforcement of the terms of the easement is at discretion of organization.

Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

- ☐ Consider providing that landowner waive claims and defenses, based upon waiver, laches, estoppel, or prescription.

Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.

- ☐ Strongly consider providing that organization cannot bring enforcement action against landowner for injury to the property resulting from circumstances beyond landowner's control.

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Riparian Habitat Conservation Zone or to recover damages for any injury to or change in the Riparian Habitat Conservation Zone resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Riparian Habitat Conservation Zone resulting from such causes. *[In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.]*

**9.
Costs, Liabilities
and Insurance,
Taxes,
Environmental
Compliance, and
Indemnification**

- ☐ Consider providing that landowner remains responsible for property and for maintaining adequate comprehensive general liability insurance coverage.
- ☐ Consider providing that landowner still pays property taxes, reduced or otherwise.
- ☒ Require landowner to represent and warrant that no toxic or hazardous substances are found on the property.

Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:.

1. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements, applicable to the Property and its use, including without limitation all federal, state, and local environmental laws, regulations, and requirements;
 2. There has been no release, dumping, burying, abandonment or migration from off-site onto the Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
 3. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Conservation Values of the Riparian Habitat Conservation Zone. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.
- ☒ Require landowner to be responsible for environmental cleanup on the property unless caused through the activities of the organization or agency.

Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation.

- ☒ Require landowner to remain responsible for losses, personal injuries, environmental concerns, and other damages unless caused by fault or negligence of the organization.

Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property that is not a consequence of any activity of any of the Indemnified Parties undertaken under the rights granted to Grantee under this Easement;
2. Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including, without limitation, CERCLA (42 U.S.C. 9601 et seq.) and MTCA (ch. 70.105D RCW), by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Property;
3. The presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement of hazardous, toxic or dangerous to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties;
4. The obligations, covenants, representations and warranties specified in this section.

**10.
Extinguishment,
Valuation and
Subsequent
Transfer**

- ☒ Provide that conservation easement may be extinguished in whole or in part before expiration of its term only if: (a) the organization determines that the purpose of the conservation easement is no longer practical to accomplish and the parties agree to extinguish the easement or release a portion of the riparian habitat conservation zone from the conservation easement; (b) a court determines that the purpose of the conservation easement is no longer possible to accomplish; or (c) the property is taken by eminent domain.

Extinguishment. This Easement may be terminated or extinguished, whether in whole or in part, before expiration of the term of the Easement only under one or more of the following circumstances:

1. The parties jointly agree to extinguish this Easement, or release a portion of the Riparian Habitat Conservation Zone from the terms of this Easement, upon a determination by Grantee in its discretion that circumstances have rendered the Purpose of this Easement impractical to achieve. Grantee's determination shall be in accordance with the provisions of the Assignment of Rights referenced in Section ____.
2. Upon petition by one or all of the parties, a court having jurisdiction over this Easement determines by judicial proceedings that circumstances have rendered the Purpose of this Easement impossible to achieve.
3. All or any of the Riparian Habitat Conservation Zone is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate, or other authority. *[Grantor and Grantee shall act jointly to recover the full value of the interest in the Riparian Habitat Conservation Zone subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received.]*

Grantor and Grantee agree that the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Riparian Habitat Conservation Zone subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section ____ of this Easement.

- ☒ Specify how to determine the fair market value of the real property interest held by the organization.

This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section ____ of this Easement, the parties stipulate to have a fair market value determined by [multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the effective date of this Easement attributable to improvements) by the ratio of the purchase price for the Easement to the fair market value of the Property, without deduction for the purchase price for the Easement, as of the effective date of this Easement].

- ☒ Require landowner to reference conservation easement in subsequent deeds and notify organization of sale or transfer and name of prospective transferee (but landowner's failure to do so must not impair the validity of the conservation easement or limit its enforceability in any way).

Subsequent Transfer. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;
2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Property;
3. Give written notice to Grantee of the transfer of any interest in all or a portion of the Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

**11.
Easement
Amendment**

- ☐ Consider allowing for amendment of the conservation easement, provided that the amendment does not affect the qualification of the conservation easement or the status of the organization under applicable laws, is consistent with the original purpose of the conservation easement and does not shorten its duration, and is in accordance with the Assignment of Rights.

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including without limitation RCW 64.04.130, ch. 84.34 RCW[, or Section 170(h) of the Internal Revenue Code of 1986, as amended] (or any successor provision(s) then applicable). Any such amendment shall be consistent with the original Purpose of this Easement and shall not shorten its duration, shall be in accordance with the provisions of the assignment of rights referenced in Section ____, and shall be recorded in the official records of _____ County, Washington, and any other jurisdiction in which such recording is required.

**12.
Assignment and
Succession**

- ☒ Provide right of organization to assign (transfer) easement to another organization or entity eligible under the RHP, which also qualifies under Washington law [and I.R.S. regulations], in accordance with the Assignment of Rights.

Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable) *[and a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder]* and in accordance with the provisions of the Assignment of Rights referenced in Section _____. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

- ☒ Provide for assignment of certain rights in the conservation easement to the State of Washington through the Interagency Committee for Outdoor Recreation.

Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Interagency Committee for Outdoor Recreation, which rights shall be co-held by Grantee and the State of Washington through the Interagency Committee for Outdoor Recreation. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit ____.

- ☒ Non-governmental grantees must identify a successor organization eligible under the RHP, which also qualifies under Washington law *[and I.R.S. regulations]*, who will hold the conservation easement if organization acquiring the conservation easement ceases to exist or it becomes impossible for the organization to ensure compliance with the conservation easement.

If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement, or Grantee ceases to exist or to be authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.250 (or any successor provision(s) then applicable, *[and to be a qualified origination under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable)]*, then Grantee's rights and obligations under this Easement shall become vested and fall upon one of the following named entities to the extent that they shall accept this Easement, in the following order:

1. _____; or

2. Such other entity, with purposes similar to Grantee's, authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.250 (or any successor provision(s) then applicable, *[and to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable)]*;

provided that if such vesting in any of the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to then applicable Washington law *[and the Internal Revenue Code]* and with due regard to the Purpose of this Easement.

**13.
Recordation**

- ☒ Require that the organization record the conservation easement instrument. (Recordation is the only way to put the world at large on constructive notice of the conservation easement.)

**14.
Subordination**

- ☒ Require consent by mortgage holders, owners of easements, lease holders, and other lien holders necessary to "bind" those parties to the terms of the conservation easement.

**15.
General
Provisions**

- ☒ Provide that interpretation and performance of the conservation easement is governed by the laws of the State of Washington.
- ☒ Provide for liberal construction in favor of the grant of the conservation easement to effect the purpose of the conservation easement.
- ☒ Provide that conservation easement terms are binding upon parties and their successors and assigns.
- ☒ Require execution and acknowledgment by landowner and organization.

SECTION V - ASSIGNMENT OF RIGHTS FOR CONSERVATION EASEMENTS ACQUIRED WITH RHP FUNDS

An assignment of rights is a recorded legal agreement the organization who acquires a conservation easement with a RHP matching grant assigns in favor of the IAC. The organization is referred to as the "Assignor" under the Assignment of Rights. The IAC is referred to as the "Assignee" under the Assignment of Rights.

The Assignment of Rights is intended to secure the public's interest that conservation easements acquired with RHP matching grants protect riparian habitat land and ensure the longevity of restoration and enhancement projects. First, it commits the organization holding the easement to monitor and enforce the terms of the easement. Second, it gives the IAC certain rights for access to the property covered by the conservation easement, which rights are co-held with the organization. Third, it indemnifies the state with respect to the acts or omissions of the landowner and organization on the riparian habitat land. Finally, it requires the organization to consult with IAC with respect to any amendment of the conservation easement or conversion of the riparian habitat land to another use. Collectively, these provisions of the Assignment of Rights ensure that the IAC has the legal ability to step in and act if the organization fails to manage or defend the conservation easement as required under RHP policies.

The Assignment of Rights is to be executed and recorded by the organization after taking title to the conservation easement. The approved format of the Assignment of Rights is provided in Appendix C.

Appendix A

REFERENCES

The following publications and journals are useful for organizations and government agencies (and their advisors) who are working with conservation easements.

The Washington Real Property Deskbook, Chapter 81, Conservation Easements, by Thomas F. Haensly & Konrad Liegel. 1996. Washington State Bar Association. 500 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121. Written especially for practitioners in Washington State. Provides a conservation easement checklist.

Wetland Preservation: a Resource Manual for Land Trusts, by Peggy Bill. 1993. Contact Washington Department of Ecology, Wetlands Section, for a copy of the manual (360-493-2681). Provides a model wetland conservation easement and other information concerning wetland preservation and stewardship.

The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs, by Janet Diehl and Thomas S. Barrett, Esq. 1988. Land Trust Alliance and the Trust for Public Land, Washington, D.C. Written by the leading experts in the field, this comprehensive guide is an essential resource for any organization that intends to handle easements and for advisors to landowners interested in conservation easements. Includes model easements with explanatory legal commentary. *See also Model Conservation Easement and Historic Preservation Easement, 1996: Revised Easements and Commentary from The Conservation Easement Handbook*, Thomas S. Barrett and Stefan Nagel. 1996. Land Trust Alliance.

The Conservation Easement Stewardship Guide: Designing, Monitoring, and Enforcing Conservation Easements, by Brenda Lind. 1991. Land Trust Alliance and the Trust for New Hampshire Lands, Washington, D.C. This comprehensive handbook is a step-by-step guide for organizations that hold conservation and historic easements. It shares the best practices of easement holders across the country and cover all aspects of easement stewardship: from selecting and drafting easements and preparing baseline-documentation to monitoring and dealing with violations.

The Federal Tax Law of Conservation Easements with Supplement, by Stephen J. Small. 1986, with Supplements. Land Trust Alliance. Written by the attorney who prepared the original draft of the IRS conservation easement regulations, this legal volume interprets the IRS final regulations on gifts of conservation easements and discusses related income and estate tax considerations. It also covers historic preservation easements, donations of remainder interests for conservation purposes, and the reservation of a "qualified mineral interest."

Appraising Easements, 1990. Co-published by the Land Trust Alliance and the National Trust for Historic preservation. This manual is an authoritative guidebook for conservation

easement appraisers, for conservation easements donors and their attorneys, and for government agencies and nonprofit organizations that acquire easements. It includes significant IRS and tax court rulings on valuation and current valuation and substantiation rules.

The Back Forty: the Newsletter of Land Conservation Law. 1990-present. Published by the Land Conservation Law Institute, a project of the Land Trust Alliance and Hastings College of the Law, University of California. Written especially for land conservation practitioners and their legal advisors. The *Back Forty* is published 6 times a year, and contains articles often addressing conservation easement topics.

Exchange: The Journal of the Land Trust Alliance. 1982-present. Land Trust Alliance, Washington, D.C. The professional journal of the land trust movement, published four times a year.

Statement of Land Trust Standards & Practices. 1989. Land Trust Alliance, Washington, D.C. This booklet outlines the standards and practices that the Land Trust Alliance believes are essential for the responsible operation of a land trust.

Contact the Land Trust Alliance, Suite 501, 1319 F Street NW Washington, DC 20004-1106, tel.: 202-638-4725, e-mail address: www.lta.org, as to the availability of Land Trust Alliance publications and journals.

Appendix B

BASELINE DOCUMENTATION AND MONITORING

Completing a baseline documentation allows you to record and characterize the environmental aspects of the Property at the time of easement acquisition. Documentation provides the basis for future easement monitoring and, if necessary, enforcement. It is particularly important in court in the event of an easement violation. Baseline documentation is also required by the IRS for any tax-deductible easement gifts.

IAC requires that a baseline documentation be completed on all properties with a conservation easement acquired through RHP. If the baseline documentation is not filed as an attachment to the conservation easement it must be referenced in the conservation easements as to its existence and whereabouts. In determining where the original baseline documentation will reside, you may want to consider who the holder of the easement is and who may be undertaking future compliance monitoring and enforcement activities. IAC must be provided with a copy of the baseline documentation.

Baseline data should characterize and document the condition of property features protected or affected by the easement terms. Baseline documentation should be descriptive and include maps, plans, photos (aerials or ground), and narratives. Documentation methodology should be objective and reproducible so that future monitoring can be repeated in a comparable manner. Include ecological, biological, geological, land use and other property features. The level of detail for each category may vary depending on physical land features and the specific terms of the easements. Generally, the more restrictive the terms of the easements, the more detailed the documentation should be.

Using IAC's format

We have developed a baseline documentation format if your organization does not already have one in place (attached). If tax-deductible easements are involved, the landowner should verify that all IRS requirements are being met by consulting with a tax attorney or accountant.

Using your own format

If you choose to use your own format, the baseline documentation must include the following:

- ☒ USGS quad map (1:24,000, 7.5"), showing property lines and other contiguous or nearby protected areas, and a parcel map or county assessors map showing property boundaries.
- ☒ A map of the area drawn to scale showing all existing human-made improvements or incursions (such as roads, buildings, fences, or structures), vegetation and wildlife (species locations, breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and riparian areas).

-
- ☑ A narrative description of the property protected by the conservation easement (at or near the time of easement purchase). Include habitat values, unique and existing land features, natural resources (include vegetation, and fish and wildlife), water quality and quantity, and historic and current land uses.
 - ☑ Photographs (black and white) taken at permanent photopoint locations on the property that adequately depict the conservation easement area and natural resources to be protected. The photographs should document the condition of the resource at or near the time of easement purchase. Include aerial photos with property boundaries indicated (if possible).

The Land Trust Alliance has two excellent references regarding baseline documentation, monitoring, and stewardship of easements: *Managing Conservation Easements. Sampling Policies and Forms from the Land Trust Community*; and *The Conservation Easement Stewardship Guide. Designing, Monitoring, and Enforcing Easements*. See Appendix A.

SAMPLE BASELINE DOCUMENTATION FORMAT

Date of visit:

Date of easement:

Name of person taking data:

I. Introduction

A. Location

1. property name, county, state
2. legal description
3. property size
4. name of quad map, series, coordinates of property
5. driving directions

B. General property description

C. Purpose of conservation easement

1. critical elements to be protected
2. other reasons (habitat preservation, unique or unusual ecological features, etc.)

D. How conservation easement will preserve critical elements (be brief). Examples include: limiting development (subdivision, or house building), limiting timber harvest, agricultural practices (livestock grazing, equipment access), etc.

II. Natural Resources Inventory

A. Geology & Soils - Describe

B. Climate (if appropriate)

C. Water Resources

1. surface hydrology (describe)
2. water quality
3. special classifications or descriptions (i.e., wetlands designation)
4. water quantity

D. Vegetation - identify and list

1. describe habitat types and existing vegetation
2. types of species (deciduous, coniferous, shrubs, grasses, etc.)
3. density of existing vegetation
4. rare plants²
5. noxious, non-native, or invasive plant species

E. Fish and Wildlife

² Contact Washington Natural Heritage Program, Department of Natural Resources, (360) 902-1674.

1. Important species, list and explain importance/status
 - a) mammals
 - b) fish
 - c) birds
 - d) reptiles
 - e) amphibians
 - f) invertebrates
2. Describe and indicate on map critical life history habitats (e.g., critical spawning habitat for salmonids, eagle nest, etc.) if applicable.

III. Historic Land Use

The conservation easement probably will restrict land use practices of the grantor. It is therefore very important that all land use practices, past, present, and allowed under the terms of the conservation easement, be accurately recorded in the baseline report.

- A. Describe past land use and its effects on any the natural resources of the property.
- B. Describe present land use and the effect on any natural resources on the property.
- C. List all significant human-made structures and/or improvements on the property and include information and location of any known archaeological sites.

IV. Existing Land Use Plans

- A. Reference appropriate federal, state, local or private plans or studies that identify specific uses or needs for the property. Include current zoning or other land-use designations.
- B. Indicate on maps and photographs all human-made structures and/or improvements such as buildings, fences, power lines, irrigation ditches, roads, ponds, etc.

Graphics

1. USGS quadrangle map with property lines and topographic features (1:24,000, 7.5minute series).
2. USGS quadrangle map indicating existing human-made structures or incursions, important species habitat locations/features, rare species locations (plant and animal), distinct natural or archeological features (1:24,000, 7.5 minute series).
3. Property base map (parcel or tax assessors) with property lines.
4. Aerial photograph with property lines.
5. Back and white photographs to illustrate inventory features. Locate point and direction of photograph on property base map (picture point) and record date, time of day and weather conditions. Color photographs will fade over time.

Appendix C

Return To:
Interagency Committee for Outdoor Recreation
P.O. Box 40917
Olympia, WA 98504-0917

ASSIGNMENT OF RIGHTS

Assignor: _____

Assignee: The State of Washington, "State"
through its Interagency Committee for Outdoor Recreation

Legal Descriptions:

1. _____
2. Additional legal descriptions on Exhibit 2 of document

Assessor's Property Tax Parcel Account Number(s):

Reference numbers of related/assigned/released/documents:

1. _____, reference to this document appears on Exhibit 1 of document

ASSIGNMENT OF RIGHTS

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the ____ day of _____, 19__, by _____, a _____ ("Assignor"), to and in favor of THE STATE OF WASHINGTON ("State"), through the Interagency Committee for Outdoor Recreation ("IAC").

RECITALS

A. Assignor has entered into a conservation easement ("Conservation Easement") with [a] certain property owner[s] (collectively "Owner") in the _____ portion of the _____ watershed (W.R.I.A. number #_____ under WAC 173-500-040) in _____, Washington. The name[s] and address[es] of the Owner and the recording number of the Conservation Easement are set forth in Exhibit 1 attached hereto and incorporated herein. The legal description of the Property subject to the Conservation Easement are set forth in Exhibit 2 attached hereto and incorporated herein.

B. The conservation purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between the recipient of IAC funds ("Sponsor") and the State through the IAC entitled _____ Project Number _____ dated _____, 19__ and the application and supporting materials which are on file with the State in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes protection [and restoration] [and enhancement] [, restoration and enhancement] of riparian habitat, as defined in the Conservation Easement.

C. Owner has authorized Assignor to assign to the State certain rights for access to and stewardship of the property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the Riparian Habitat Program (RHP) administered by the IAC under SSB6063, Ch. 235, § 329(6) (1997). Such rights are valuable to the State in connection with ensuring protection of riparian habitat under the terms of the Conservation Easement, and are particularly valuable because Assignor and Owner have agreed that Assignor will retain all responsibility for obligations of the Assignor under the Conservation Easement.

D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the State agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the Habitat Conservation Account of the General Fund of the State of Washington and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the State individually, and as the representative of all the people of the State, the following rights (collectively referred to as "Rights") under the Conservation Easement the recording number of which is listed in Exhibit 1 attached hereto and incorporated herein by this reference:

a. Access. To enter the Riparian Habitat Conservation Zone, as defined in the Conservation Easement, through the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. Injunction and Restoration. In the event of the failure of Assignor to undertake such injunction and restoration, to enjoin any use of, or activity in, the Riparian Habitat Conservation Zone which is inconsistent with the terms of the Conservation Easement, including trespass by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Riparian Habitat Conservation Zone as may be damaged by uses or activities contrary to the provisions of the Conservation Easement.

c. Enforcement. In the event of the failure of Assignor to undertake such enforcement, to enforce the terms of the Conservation Easement, and thereby assume the Assignor's remedies under the Conservation Easement.

d. Amendments. To review and approve any proposed amendments to the Conservation Easement. Review and approval by IAC's Director will be for compliance with the terms of the Project Agreement.

e. Termination For Reasons of Impracticability. To review and approve any proposed agreements to terminate the Conservation Easement, or release a portion of the Riparian Habitat Conservation Zone from the terms of the Conservation Easement, before expiration of the term of the Conservation Easement for the reason that circumstances have rendered the conservation purpose of the Conservation Easement impractical to achieve.

f. Stewardship Plans. To review any Stewardship Plans, including riparian habitat restoration and enhancement plans, as defined in the Conservation

Easement. Review by IAC's Director will be for compliance with the terms of the Project Agreement.

These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **State's Exercise of Rights.** The State hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.

3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the State that:

a. Owner, identified in Exhibit 1 attached hereto and incorporated herein, has authorized and approved this Assignment.

b. Assignor shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.

c. Assignor shall comply with, and IAC shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.

d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to any Conservation Easement as of the date provided above.

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the State has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Conservation Easement.

5. **Indemnity.** Assignor shall defend, protect and hold harmless the State, IAC, or any employees thereof, from and against any and all costs, claims, fees and expenses arising out of or in any way relating to Assignor's representations and warranties under this Assignment, Assignor's obligations under the Conservation Easement, or the acts by or omissions of Assignor or Owner.

6. **Replacement Property.** The Conservation Easement may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the Conservation Easement. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests within the same watershed, and if no feasible opportunity exists in the same watershed, within another watershed; provided, however, that any such project must be identified in an eligible

watershed plan or accomplish an objective cited in such a plan. Assignor hereby agrees to consult with, and receive the approval of, the IAC in the selection of any replacement property and to assign to the State the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Conservation Easement, or the performance of any obligations to the State under the Conservation Easement, without the express written consent of the IAC's Director.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement, and shall expire upon the expiration date of the Conservation Easement (if any).

9. **Disputes.** Any disputes between Assignor and the State under this Assignment shall be governed by the terms of the Project Agreement.

10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the State involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

ASSIGNOR:

STATE:

_____,
a _____

THE STATE OF WASHINGTON, through
its Interagency Committee for Outdoor
Recreation

By _____
Its _____

By _____
Its Director

ATTACHMENTS:

Exhibit 1 - Owner and Conservation Easement Recording Number

Exhibit 2- Legal Description of Property Subject to Conservation Easement

[illegible]

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

--	--

(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

[illegible]

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Director of the Interagency Committee for Outdoor Recreation of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

[illegible]

(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT 1

OWNER AND CONSERVATION EASEMENT RECORDING NUMBER

Name(s): _____

Address: _____

Recording No.: _____

EXHIBIT 2

LEGAL DESCRIPTION FOR PROPERTY SUBJECT TO CONSERVATION EASEMENT

DESCRIPTION OF RIPARIAN HABITAT CONSERVATION ZONE